

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

APEXART CURATORIAL PROGRAM,
INC.,

Plaintiff,

v.

BAYSIDE ROLLERS LLC, ABIGAIL
CARSWELL, BAYSIDE HOSPITALITY
LLC, a Washington Limited Liability
Company, and AMERICAN URBAN ART
AND GRAFFITI CONSERVATION
PROJECT, a Washington Non-Profit
Corporation,

Defendants.

CASE NO.
2:22-cv-01807-TSZ

**ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

(PROPOSED)

THIS MATTER having come on for hearing before the undersigned Judge on
Defendants' Motion for Partial Summary Judgment and Plaintiff's Motion for Partial
Summary Judgment, the Court having considered the materials filed on this issue,
including:

1. Defendants' Motion for Partial Summary Judgment;

(PROPOSED) ORDER GRANTING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT & DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT-Page 1

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2. The Declaration of John Carswell, and exhibits thereto in support of Defendants' motion and in opposition to Plaintiff's motion;

3. The Declaration of Sherry Jennings, and exhibits thereto in support of Defendants' motion and in opposition to Plaintiff's motion;

4. The Declaration of Jordan Kostelyk, and exhibits thereto in support of Defendants' motion and in opposition to Plaintiff's motion

5. Plaintiff Apexart Curatorial Program, Inc.'s Motion for Partial Summary Judgment;

6. Declaration of Emily Parsons and exhibits thereto in support of Plaintiff's Motion;

7. The Declaration of Steven Rand and exhibits thereto in support of Plaintiff's Motion

8. _____

9. _____

10. _____

11. _____

And being fully advised; now therefore

IT IS ORDERED that Defendants' Motion for Partial Summary Judgment is GRANTED.

IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED.

IT IS ORDERED that Plaintiff's claims for actual and punitive damages are dismissed.

(PROPOSED) ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT & DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT-Page 2

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1 IT IS ORDERED that Plaintiff's federal trademark infringement claim under 15
2 USC 1114 is dismissed.

3 IT IS ORDERED that Plaintiff's claim that this is an exceptional case under 15
4 U.S.C. § 1117(a) is dismissed.

5 IT IS ORDERED that Plaintiff's claims for common law unfair competition and
6 Washington State Consumer Protection Act claims (RCW 19.86 et seq) are dismissed
7 because Plaintiff has not proven that the Defendants have engaged in unfair or deceptive
8 practice, nor has Plaintiff shown that any alleged practice causes a public interest impact
9 that causes injury to its business or property.

10 Defendants are entitled to summary judgment dismissal of all Defendants claims
11 because no reasonable jury could find, even after drawing any material factual
12 inferences in light most favorable to Plaintiff, that Defendants' actual use of APEX Art
13 and Culture Center as shown in the record creates a likelihood of confusion in the minds
14 of the relevant consuming public or donors as to the origin or source of the services to
15 cause injury to Plaintiff.

16 IT IS FURTHER ORDERED that Defendants may file a motion for reasonable
17 attorney's fees under 15 U.S.C. 1117 of the Lanham Act, and an amount thereof, by
18 separate motion.

19 (PROPOSED) ORDER GRANTING DEFENDANTS' MOTION FOR
20 PARTIAL SUMMARY JUDGMENT & DENYING PLAINTIFF'S
21 MOTION FOR SUMMARY JUDGMENT-Page 3

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1
2 DATED: _____
3

4 _____
5 HONORABLE THOMAS S. ZILLY
6 United States District Judge

7 OJALA LAW INC., P.S.

8 /s/ Peter C. Ojala
9 Peter C. Ojala, WSBA#42163
10 Jordan D. Kostelyk, WSBA#59968
11 Attorneys for Defendants
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25 (PROPOSED) ORDER GRANTING DEFENDANTS' MOTION FOR
26 PARTIAL SUMMARY JUDGMENT & DENYING PLAINTIFF'S
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